

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**State of West Virginia,
Plaintiff Below, Respondent**

vs.) **No.11-0301** (Raleigh County No. 09-F-73-H)

**Oley Ransom,
Defendant Below, Petitioner**

FILED
October 11, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Oley Ransom, defendant below, pleaded guilty to first degree sexual abuse. He now appeals the portion of his sentence that imposes a post-release, fifty-year term of extended sexual offender supervision pursuant to West Virginia Code § 62-12-26.

This Court has considered the parties' briefs and the record on appeal. This matter has been treated and considered under the Revised Rules of Appellate Procedure pursuant to this Court's order entered in this appeal on May 10, 2011. The facts and legal arguments are adequately presented in the parties' written briefs and the record on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules.

Petitioner was indicted on one count of sexual assault in the second degree. Petitioner entered a guilty plea to the lesser-included offense of first degree sexual abuse. He later filed a motion to set aside the plea which was denied by the circuit court. Petitioner was sentenced to an indeterminate term of not less than one nor more than five years of incarceration, and, pursuant to West Virginia Code § 62-12-26, a post-release, fifty-year term of extended sexual offender supervision. Specific terms of the extended supervision include polygraph examinations and electronic monitoring as deemed necessary.

Petitioner challenges the constitutionality of West Virginia Code § 62-12-26. He argues that the fifty-year term of extended supervision violates his due process rights because he may be required to serve an additional period of incarceration if he violates the provisions of his supervised release. Petitioner also argues that extended supervision violates both the ban on cruel and unusual punishment and the requirement that penalties be proportionate to

the character and degree of the offense because the fifty-year term is ten times longer than the maximum period (five years) of incarceration ordered by the circuit court.

Subsequent to the filing of this appeal, this Court issued its opinion in *State v. James*, 227 W.Va. 407, 710 S.E.2d 98 (2011), which directly addresses petitioner's assignments of error. In Syllabus Point 9 of *James*, we held that

West Virginia Code § 62-12-26 (2009) does not facially violate due process principles of the Fourteenth Amendment to the Constitution of the United States or Article III, Section 10 of the Constitution of West Virginia. The terms of the statute neither infringe upon a criminal defendant's right to jury determination of relevant factual matters, nor are the provisions of the statute regarding conditions of unsupervised release unconstitutionally vague.

Furthermore, we held in Syllabus Point 6 of *James* that:

West Virginia Code § 62-12-26 (2009) is not facially unconstitutional on cruel and unusual punishment grounds in contravention of the Eighth Amendment to the United States Constitution or Article III, § 5 of the West Virginia Constitution.

Regarding petitioner's argument that his fifty-year period of extended supervision is disproportionate to his sentence, we noted in *James* that "the Legislature has determined that in order to adequately protect society, the crimes enumerated in the supervised release statute require community-based supervision and treatment over and above incarceration. Supervised release is a method selected by the Legislature to address the seriousness of these crimes to the public welfare and to provide treatment during the transition of offenders back into society with the apparent goal of modifying the offending behavior. Similarly, we fail to see that the provisions of the supervised relief statute as facially flawed because they unfailingly result in a disproportionate punishment in consideration of the nature of the offenses committed." 227 W.Va. at 416, 710 S.E.2d at 107. As such, and given the facts and circumstances of this particular case, we leave the determination of the appropriate period of extended supervision to the sound discretion of the sentencing court.

For the foregoing reasons, we affirm the circuit court's order.

Affirmed.

ISSUED: October 11, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Menis E. Ketchum

Justice Thomas E. McHugh